**IN** THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1201 OF 1992

Samata Shikshan Sanstha
C/o Samata Vidya Mandir,
Mohil Village, Saki Naka,
Bombay-400 072. .... Petitioner

- Versus -

1. Kamala Kant Rai
C/o Sudharam Yadav,
Ramkrishna Niwas, 3/3,
Pipeline, Mohili Village,
Saki Naka, Bombay-400 072.

2. State of Maharashtra .... Respondents

Sarvasri Neel Helakar h/f L.M. Nerlekar
for the Petitioner.

Shri Mihir Desai for the Respondent No.1.

**CORAM:** R.M.S. KHANDEPARKAR, J.

**DATED:** NOVEMBER 20, 2006

**ORAL JUDGMENT:**

1. Heard. The petitioner challenges the Judgment and Order dated 13-12-1991 passed by the School Tribunal, Mumbai in Appeal No.Gen/209/Bom-90 of 1989. By the impugned Order, the oral order of termination dated 14-8-1989 issued by the petitioner against the respondent (No.1) has been set aside and the petitioner-management has been directed to reinstate the respondent to his original post and to pay him the difference in emoluments including the pay and

allowances from the date of termination of his services till he is reinstated to his original post.

2. Few facts relevant for the decision are that the school of the petitioner-society is fully aided since 1989-90 and is governed by the rules and regulations applicable to the appointments to be made in respect of the staff members of the school, including the teaching staff. It is the case of the petitioner that the respondent was being appointed for a fixed term every year from 1986-87 onwards till the academic year 1988-89. The respondent, alleging to be permanent employee of the petitioner, sought to challenge the oral termination order by filing appeal before the School Tribunal which came to be allowed mainly on the ground that the appointment of the respondent was made in clear and permanent vacancy which was not meant for backward class candidate. It was further held by the Tribunal in its Judgment that the petitioner has failed to establish that the vacancy in which the respondent was appointed was reserved for backward class candidate and that, therefore, the appointment of the respondent was purely a temporary one. The contentions on behalf of the petitioner are sought to be seriously disputed on behalf of the respondent.

3. Though the impugned order is sought to be challenged

on various grounds, it is not necessary to address to all those grounds and suffice to refer to only one ground, namely that the finding about the appointment of the respondent being in clear and permanent vacancy which was not meant for backward class candidate has been arrived at totally ignoring the material on record in the form of roster which could disclose the fact that the vacancy was in fact meant for the backward class candidate.

4. It is the contention on behalf of the petitioner that the petitioner in the course of hearing of the appeal had duly produced on record the roster for the academic year 1986-87 as well as 1987-88 as also for the year 1988-89. However, the Tribunal not only ignored the same but arrived at a finding contrary to the materials on record that the petitioner had failed to produce such roster. The learned Advocate for the respondent, on going through the records, also fairly admitted that the records do disclose that such roster was produced by the petitioner.

5. Perusal of the impugned Judgment indeed discloses a clear finding that the petitioner had not produced any roster to show that during the academic year 1986-87 or 1987-88 the respondent was appointed in the vacancy meant for the backward class candidate. It has been

further held that it is an admitted fact that the respondent was working in the petitioner-school during 1986-87 and in view of the failure on the part of the petitioner to show that the vacancy in which the respondent was appointed during 1986-87 was also reserved for backward class candidate, it is to be assumed that the respondent was appointed in clear and permanent vacancy during 1986-87 on probation.

6. Undisputedly, the records disclose that the petitioner had produced the necessary roster for the relevant year and the same discloses various vacancies which are meant for and are to be filled in by the reserved category candidates. At the same time, it is not in dispute that the appointment order of the respondent on the face of it refers to the fact that the appointment was in the S.T. backlog vacancy. At the same time, the appointment is also stated to be on probation for a period of two years. In the back ground of these facts and taking into consideration the fact that the petitioner had produced the roster for the year year, it was necessary for the Tribunal to analyse all the materials on record, including the roster and after taking into consideration the provisions of law comprised under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules made thereunder ought to have arrived at the

appropriate finding as to whether the appointment of the respondent was in clear vacancy, whether it was meant for the reserved category candidate or not and accordingly ought to have dealt with the claim of the respondent as well as the contentions which are sought to be raised on behalf of the petitioner. The impugned order nowhere discloses any such an exercise having been done by the Tribunal before allowing the appeal filed by the respondent and directing his reinstatement. As rightly submitted by the learned Advocate for the petitioner, the finding by the Tribunal about the failure on the part of the petitioner to produce the roster is totally contrary to the materials on record and, therefore, cannot be sustained. Since the further finding about the appointment of the respondent being in clear and permanent vacancy which was not meant for the backward class candidate is based solely on the assumption that the vacancy was a clear and permanent vacancy during 1986-87 and such assumption having been arrived at on account of the alleged failure on the part of the petitioner to produce the roster for the relevant period, once it is found from the records that such roster was, in fact, produced, all those findings are liable to be set aside and the matter to be remanded to the Tribunal to decide the same afresh, after taking into consideration all the materials on record including the said roster and bearing in mind the provisions of

law applicable to the matter.

7. In the result, therefore, without expressing any opinion on the merits of the case, while setting aside the impugned Order, the matter is remanded to the School Tribunal to decide the said appeal afresh taking into consideration all the materials on record, including the roster and after hearing the parties and in accordance with the provisions of law. Needless to say that since the appeal relates to the year 1989, the same will have to be disposed of as expeditiously as possible and in any case, on or before 30-4-2007, without fail. The School Tribunal to file compliance report in the first fortnight of the month of June, 2007. The rule is made absolute accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

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